



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

March 19, 2009

1. Bill Number and Sponsor:

House Bill 4031
Representative Douglas Geiss

2. Purpose:

This bill amends Section 5c of the Fire Prevention Code, 1941 PA 207, as amended (Act 207), to require the owner or operator of an aboveground storage tank (AST) for a flammable or combustible liquid that has not been in use for 3 years to remove the tank.

3. How This Legislation Impacts Current Programs in the Department:

There would be no impact on the Department of Environmental Quality (DEQ), Remediation and Redevelopment Division. However, there would be a significant impact to the DEQ, Waste and Hazardous Materials Division, Storage Tank and Solid Waste Section, Storage Tank Unit. Enactment of this legislation would require owners and operators of ASTs to remove them after 3 years of nonuse. The storage and handling of Flammable Liquids and Combustible Liquids (FL/CL) Rules currently require the owner/operator of an AST to clean the tanks, safeguard them against trespass, and file a change of information form with the Storage Tank Unit within 1 year of discontinuing use of the tank, all of which would still be required under the proposed legislation.

4. Introduced at Agency Request:

No.

5. Agency Support:

No.

6. Justification for the Department's Position:

The DEQ is unaware of problems resulting from ASTs that have been properly emptied, cleaned, and secured in compliance with Act 207. Under current law, a tank may be placed back into service in the future if the tank meets design standards at that time and is tested for tightness and certified for use.

This bill would place additional burdens on the regulated community and the DEQ without providing for any real additional environmental protection to the public, land, or waters of this state.

As introduced, the bill applies to all ASTs containing a flammable or combustible liquid regardless of size. This would include residential heating oil tanks, farm tanks, and emergency generator systems. This scope is overly broad and may result in costly and confusing requirements for homeowners and unrealistic expectations for department enforcement.

The bill would require tanks that have been taken out of service (i.e. tanks that have been emptied, cleaned, and secured) to be physically removed from the premises. In order to place an out-of-service tank back into use, the tank must meet current design standards and be tested for tightness. Requiring removal of a tank that can be safely used in the future – (i. e. a tank that is a potential business asset) -- is not good public policy, and is not a wise use of resources.

While it could be argued that the removal of the tanks after 3 years of non-use would limit potential issues with accidents involving the ASTs, such as illegal or accidental delivery or entry into a confined space, the department has no record of such incidents. In addition, while the removal of the tank could make it easier to identify releases below the tank or through the tank bottom to the ground, regulations already exist to address this concern. Finally, some may argue that the removal of ASTs could be viewed as an anti-blight measure. It should be noted however, that this bill could result in overriding existing local efforts to prevent blight through a local requirement to remove an out-of-service tank in some time frame shorter than 3 years.

The bill only provides for removal of ASTs, and does not require proper disposal of tanks no longer in use. If the Legislature enacts legislation such as that proposed in this bill, amendments should be included to require tank disposal consistent with pertinent regulations.

7. State Revenue/Budgetary Implications:

There would be no new revenue associated with this bill, but existing funds would need to be spent to enforce the new requirements. There would be an unknown additional inspection burden on the DEQ, as it is not known how many out-of-service ASTs exist in Michigan.

8. Implications to Local Units of Government:

In addition to pre-empting local zoning, this bill could negatively impact local economic development authority proposals/brownfield redevelopment by hindering the reuse of valuable assets by requiring tanks to be removed before the end of their useful life. For example, tanks located at a closed manufacturing facility

could be required to be dismantled before the facility could be rehabilitated and brought back into use by another company.

9. Administrative Rules Implications:

The FL/CL administrative rules would need to be updated to comply with the proposed new statutory requirements.

10. Other Pertinent Information:

The caption of the bill reads as follows: "Environmental protection; hazardous waste; aboveground gasoline and diesel storage tanks; require *remediation* [emphasis added] and removal of within 3 years of dormancy. Amends sec. 5c of 1941 PA 207 (MCL 29.5c)." The text of the bill addresses the requirement to remove an AST but does not specifically mention any requirements for remediation.

If the bill is intended to provide for a more timely detection of releases from ASTs, then it needs to be amended to require site assessments (soil or groundwater sampling) in addition to removal, similar to how the Underground Storage Tank (UST) closure requirements are addressed in Part 211, Underground Storage Tank Regulations, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. It should be noted that a past attempt to add site assessments in administrative rules was not supported by stakeholders and would be viewed as highly controversial if pursued at this time.

The proposed bill would be more stringent than Part 211 for USTs in that a properly maintained UST can remain in place and out of service indefinitely. USTs are generally considered to be a greater threat to the environment than ASTs.

Since the term "in use" is not defined in Act 207, the DEQ would interpret the phrase in the bill "not been in use" to mean the same conditions that currently trigger requirements to empty, clean, and secure an AST system that is out of service. Similarly, we would not expect the removal requirement to apply to processing tanks that are not required to be registered.



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